

PATENT APPLN. NO. 10/522,771
RESPONSE UNDER 37 C.F.R. §1.111

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REMARKS

For convenience in responding to the Office Action of April 28, 2010, headings used in the Action are used below.

Claim Rejections - 35 USC § 112

Claims 1, 3-9, 14-21, and 24-29 are rejected under 35 U.S.C. § 112, second paragraph. The Office asserts that the phrase "obtained by heat treating a mixture of a fluorine compound and raw materials used to formulate said lithium transition metal complex oxide by heat treatment" is not clear.

To clarify that a mixture of raw materials from which the lithium transition metal complex oxide is formed by heat treatment and a fluorine compound is heat treated to obtain the lithium transition metal complex oxide containing fluorine, applicants have reworded the relevant phrase in claims 1, 4, 5 and 12 to recite that the lithium transition metal complex oxide is obtained by "forming a mixture of (1) a fluorine compound and (2) raw materials used to form said lithium transition metal complex oxide by heat treatment and heat treating said mixture".

The claims are now believed to be definite within the meaning of the second paragraph of 35 U.S.C. § 112.

Claim Rejections - 35 USC § 103

Claims 1, 4-9, 14-21, and 24-29 under 35 U.S.C. § 103(a) as

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being unpatentable over Kazuhara (JP 2002-100357) in view of Kurokawa (JP 06-243871). Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kazuhara in view of Kurokawa and further in view of Goto (US 6444351).

Reconsideration and withdrawal of these rejections is respectfully requested for the following reasons.

Kurokawa discloses a fluorine contained composite oxide represented by a formula: $Li_xNi_{1-y}Co_yO_wF_a$ as a positive active material (English abstract). On the other hand, Kazuhara discloses a lithium-nickel-manganese-M complex oxide expressed by $Li_xNi_yMn_{1-y}M_2O_2$ and a lithium-cobalt complex oxide expressed by Li_xCoO_2 as a positive active material (English abstract, a copy of which is attached to this letter).

$Li_xNi_{1-y}Co_yO_wF_a$ disclosed in Kurokawa does not include manganese. Therefore, $Li_xNi_{1-y}Co_yO_wF_a$ does not correspond to the lithium-nickel-manganese-M complex oxide disclosed in Kazuhara. As taught by Nishida (EP 1246279), which was cited in the previous Office Action, teaches in paragraphs [0075] and [0087], the same effect (of fluorine) is not necessarily obtained in different types of positive active materials. Therefore, a person of ordinary skill in the art could not reasonably expect the effect of fluorine in Kurokawa to apply to the battery of Kazuhara in which the

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positive active material is different from that of Kurokawa and would not have a proper reason to add fluorine to the lithium-nickel-manganese complex oxide of Kazuhara.

The 35 U.S.C. § 103(a) rejection of claim 3 depends on the sufficiency of the combination of Kazuhara and Kurokawa to support a *prima facie* case of obviousness of claim 1, on which claim 3 depends, under 35 U.S.C. § 103(a). Since Kazuhara and Kurokawa do not support the rejection of claim 1 under 35 U.S.C. § 103(a), the rejection of claim 3 is also not proper and removal of the rejection is also in order.

The foregoing is believed to be a complete and proper response to the Office Action dated April 28, 2009.

In the event that this paper is not considered to be timely filed, applicants hereby petition for an appropriate extension of time. The fee for any such extension and any additional required fees may be charged to Deposit Account No. 111833.

Respectfully submitted,
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